

MIDDLESEX

A special column devoted to county events

21 years of arguing, water's still polluted

Since 1971, officials of the state's Environmental Protection Agency have been aware that potentially hazardous organic chemicals and heavy metals are polluting an underground source of drinking water that serves Perth Amboy.

As they began monitoring wells to check the extent of pollution, they vowed to take action to contain the spreading hazardous substances and remove the pollutants from the aquifer, known as the Runyon Watershed.

Now, it's 1992 and guess what? Portions of the watershed remain polluted. In fact, state and city officials say, contaminants have fanned over a much larger area of the aquifer since quantities of zinc, cadmium, lead and organic, or hydrocarbon, pollutants were discovered in 1971 during a routine state inspection of six wells in the watershed, located in Old Bridge.

City officials and residents have been wondering why the cleanup has not been completed by now, and are wondering who's at fault.

Superior Court Judge C. Judson Hamlin has been pondering the same questions and places the blame squarely on the shoulders of attorneys who, he said, have been in and out of court for years in a battle that has stalled any responsible cleanup attempt.

Hamlin was amazed by the lack of cleanup work and warned attorneys that further delays will not be tolerated. He scheduled a trial at the Middlesex County Courthouse in New Brunswick this week to settle a new round of issues that have cropped up in the cleanup dispute.

The seemingly endless trials in the case started soon after the pollution was discovered.

Initially, city and state environmental attorneys attempted to hold two industries responsible for the pollution, and ultimately won a court decision that found Madison Industries and Chemical & Pollution Sciences (CPS) liable. They also battled over how best to clean the site.

By 1981, then-Superior Court Judge David D. Furman ordered the companies to undertake a \$5.2 million cleanup program known as the

"bathtub plan," in which pollutants would be contained by a clay liner within the boundaries of the contaminated area.

Litigants continued to debate the effectiveness of the cleanup proposal, and repeatedly returned to court, embroiled in the dispute which has outlasted judges assigned to the case.

After Judge Furman, the case was reviewed by then-Superior Court Judge Richard S. Cohen and later went before then-Superior Court Judge John E. Keefe.

Attorneys argued that since the bathtub plan was approved, engineers learned in 1986 the plan would not contain pollutants successfully.

Following another lengthy trial in 1988, Judge Keefe rejected the bathtub plan in favor of a \$2.7 million proposal in which contaminants would be pumped out of the aquifer, treated and properly discharged.

Lawyers representing the state and the two companies said at the time they favored the new plan, asserting the Wehran proposal, named for the New York engineering firm that designed it, was less expensive and, unlike the bathtub, would actually pump pollutants out of the contaminated aquifer.

While monitoring of the aquifer continued, little action was taken to implement the Wehran plan, as state and company officials continued bickering over how best to implement it.

In the meantime, tests showed the pollution continued spreading beyond the area of containment cited in the Wehran plan, rendering the proposal ineffective.

Perth Amboy officials returned to court earlier this month charging that the state Department of Environmental Protection and Energy (DEPE) has failed to implement the cleanup. The city officials are seeking to take control of the cleanup and want the court to hold the two companies in contempt for failing to do the job.

That was when Hamlin entered the fray. "One is overwhelmed by the fact that two public entities (and) two major industries, after years of court process, have yet to make any significant dent or remediation to a difficult and dangerous problem," the judge said.

"In reviewing the documents, while there is much in dispute, an unbiased and objective reader cannot but come away with the conclusion that this is a problem that is worsening and that if it does not present... a clear and present danger to the water supply... it certainly has the clear capacity to do so in the near future if no concrete steps are taken," the judge observed.

"This is an important issue and it has drawn on far too long," Hamlin said, adding, "This is a priority matter... The public's health is at stake."

He further suggested the matter may have been resolved long ago had any of the lawyers in the dispute lived in Perth Amboy and had to drink the water.

Instead, he chided, attorneys could have put their children through college on the fees they collected while litigating the Runyon case.

He called company attorneys "obstructionists" for stalling the cleanup by filing seemingly endless appeals of court decisions, and then told DEPE officials to "get off your duffs," noting they had taken no position on whether to support or oppose Perth Amboy's lawsuit.

"We in the judicial system and we in the legal system forfeit our right of respect by the people when, after a decade, we are unable to solve one of the most significant and real problems that face the people," the judge said.

"We should entertain no doubt as to why, occasionally, our profession is held in disrepute when there is a clear and present need to be resolved and all we have done consistently is to drag it out without any effective tool," the judge said.

Hamlin's remarks reveal him as a tough-talking jurist whose sharp wit and strong command of the law clearly put him in charge of a case that must be resolved.

He seems determined to settle the case once and for all and gives hope that Perth Amboy will have a clean source of drinking water.

By JIM O'NEILL

Jim O'Neill is a member of the staff for the Middlesex County edition.

